

HOUSE BILL 846

By Ragan

AN ACT to amend Tennessee Code Annotated, Title 8,  
relative to public officers.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 8, is amended by adding the following  
as Chapter 28 thereto:

8-28-101. This chapter shall apply and the solicitor general may act in any case  
where the attorney general and reporter refuses to act, and the solicitor general, in  
consultation with speaker of the house and speaker of the senate, or the general  
assembly by resolution, exempt from any committee or subcommittee inhibiting action,  
passed by a majority vote of a quorum in both chambers, determines that it is in the best  
interest of the state to act in lieu of the attorney general and reporter.

8-28-102.

(a) The solicitor general for the state shall be appointed by a joint vote of  
the general assembly for a term of four (4) years. The solicitor general shall  
perform the duties of the office as required by law and shall be subject to any  
penalty prescribed by law.

(b) The solicitor general shall be licensed to practice law in the state of  
Tennessee, and shall have such training or practical experience as may be  
deemed necessary by the general assembly to perform the duties of the office.

8-28-103. The solicitor general shall receive a compensation for services as set  
by the general assembly. The solicitor general shall not be allowed any fees or  
perquisites of office nor hold any other office of trust or profit under this state or the  
United States.

8-28-104.

(a) The solicitor general, consistent with budgetary limitations and such statutory limitations to the office as are operable, is authorized to appoint such assistants and other personnel as the solicitor general may deem necessary to perform the duties of the office. All assistants and other personnel shall hold office during the pleasure of the solicitor general and shall have such titles and perform such duties as may be assigned to them by the solicitor general. All assistants shall take oath to discharge the duties imposed.

(b) Nothing in this chapter shall be construed to prohibit the solicitor general, or assistants acting at the solicitor general's discretion and control, from accepting pro-bono legal assistance. Such pro-bono assistance may be solicited or offered from agencies and firms domiciled outside the state or agencies and firms of the state, or both, being within statutory constraints for such assistance.

8-28-105. The solicitor general and assistants shall be under the disabilities, restrictions, and disqualifications of district attorneys general.

8-28-106. The solicitor general, or assistants acting at the solicitor general's discretion, has the following duties:

(1) To defend the constitutionality and validity of all legislation of statewide applicability, except as provided in subdivision (2), enacted by the general assembly, except in those instances where the solicitor general is of the opinion that such legislation is not constitutional, in which event the solicitor general shall publically so certify in a reasoned and referenced form to the speaker of each house of the general assembly, available upon request to any member thereof;

(2) To exercise discretion to defend the constitutionality and validity of all private acts and general laws of local application enacted by the general assembly and of administrative rules or regulations of this state. However, a

sufficient adversary relationship must exist before the discretion not to defend the constitutionality of all legislation of local application may be exercised. If such discretion not to defend is exercised, such decision shall be certified to the speaker of each house of the general assembly, in the same manner as provided in subdivision (1);

(3) To notify the director of the fiscal review committee of any lawsuit filed in state or federal court in which the state is a named party and the solicitor general or assistants are representing the state, which contains as part of the pleadings an allegation which would raise an issue:

(A) Of insufficient funding of a law as enacted or amended, including any regulation authorized by such act; or

(B) That the implementation by a department, agency or governmental entity of a law as enacted or amended, including any regulation authorized by such act, was accomplished in a manner that resulted in insufficient funding, which lawsuit, if adjudicated in the plaintiff's favor, would result in a mandated increase in state expenditures;

(4) To confer with the speaker of each house of the general assembly upon notification by the director of the fiscal review committee under § 3-7-109;

(5) To notify the director of the office of legal services for the general assembly or the director's designee and the director of the fiscal review committee of any lawsuit filed in state or federal court in which the state is a named party and the solicitor general or assistants are representing the state, and in which the adjudication could result in a significant increase in state expenditures, in which a decision on a policy issue which may result in a

significant increase in state expenditures, or in which a decision may affect the bond rating of the state.

(6) To bring suit upon behalf of the state, local government units or local education agencies to recover public funds from entities financed by the funds and their directors or officers when the funds through the improper actions of the directors or officers have been used for unauthorized purposes, misapplied or misappropriated;

(7) To voluntarily, at the discretion of the solicitor general, assist the attorney general and reporter in such tasks and responsibilities as may seem appropriate providing that such assistance does not interfere with duties specified elsewhere in this chapter.

(8) To attend to any other duty which may devolve upon, or be imposed upon, the solicitor general by law.

8-28-107. The solicitor general is authorized to promulgate rules and regulations to effectuate the purposes of this chapter. All such rules and regulations shall be promulgated in accordance with Tennessee Code Annotated, Title 4, Chapter 5.

SECTION 2. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 3. This act shall take effect January 1, 2014, the public welfare requiring it.